HCJD/C-21

JUDGMENT SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Murder Reference No. 614 of 2010
Criminal Appeal No. 2509 of 2010

Mst. Asia Bibi **Versus** The State & another

JUDGMENT

Date of Hearing: 16.10.2014
Appellant by: Ch. Naeem Shakir, Sardar Khalil Tahir Sandhu and Mr. S.K Chaudhry, Advocates.

Complainant by: M/s Ghulam Mustafa Chaudhry, Hameed Ahmed Choudhary, M. Tahir Khokhar, Amir Latif Subhani, Ch. Khalid Mehmood, M. Javed Iqbal Ramday and Tahira Shaheen, Advocates.
State by: Mirza Abid Majeed, Deputy Prosecutor General.

Syed Shahbaz Ali Rizvi, J:- The appellant Mst. Asia Bibi was tried in a case F.I.R. No.326 dated 19.06.2009 for an offence under Section 295-C, P.P.C. registered at Police Station Sadar Nankana Sahib and was convicted and sentenced by the learned Addl. Sessions Judge, Nankana Sahib vide impugned judgment dated 08.11.2010 as under: -

> ***U/s 295-C PPC. Death** with a fine of Rs.100,000/- and in default whereof, to further undergo six months SI.*

2. Through this single judgment, we incline to decide this Capital Sentence Reference (wrongly mentioned as Murder Reference) No.614 of 2010 forwarded by the learned trial Court under Section 374 Cr.P.C. for confirmation or otherwise of the sentence of death of

the convict Mst. Asia Bibi along with Criminal Appeal No.2509 of 2010 filed by her.

3. The facts in brief, as unfolded in the FIR Ex.PA/1, lodged by Qari Muhammad Saalam (PW.1) are that on 14.6.2009, the appellant Mst. Asia Bibi, a Christian Preacher along with other ladies including Mafia Bibi (PW.2), Asma Bibi (PW.3) and Yasmin (given up PW) of the village was plucking *Falsa* (Grewia/purple berry), in the field belonging to one Muhammad Idrees (CW.1) where the appellant uttered derogatory remarks against the Holy Prophet Hazrat Muhammad (Peace Be Upon Him) by stating that (Maaz Allah) the Prophet of the Muslims fell ill one month prior to his death and the insects nourished in His mouth and ear. She further stated that your Prophet (PBUH) married Hazrat Khadija (R.A) just for her wealth and after looting the same, she was deserted by Him. She further stated that Holy Quran is not the book of God but a man-made book. The PWs narrated the matter to the complainant Qari Muhammad Saalam and others. On 19.6.2009, the complainant along with Muhammad Afzal, Mukhtar Ahmad, sent for Asma Bibi etc and Asia Bibi (the appellant) and inquired from her who confessed her guilt in a public meeting; hence the case.

4. The prosecution in order to prove its case, produced as many as seven (7) witnesses including Qari Muhammad Saalam PW.1, the complainant, witness of extra judicial confession; PW.2 Mafia Bibi and PW.3 Asma Bibi furnished ocular account of the occurrence;

PW.4 Muhammad Afzal, is the witness of extra judicial confession, PW.5 Muhammad Rizwan SI scribed the FIR and Muhammad Amin Bukhari, SP PW.6, conducted and completed the investigation in compliance of section 156-A, Cr.P.C while PW.7 Muhammad Arshad SI conducted initial investigation of this case whereas Muhammad Idrees, owner of the place of occurrence, was examined as CW.1.

5. The prosecution through learned public prosecutor, gave up PWs Yasmin Bibi and Mukhtar Ahmad, being unnecessary and closed the prosecution evidence.

6. The statement of the appellant was recorded under Section 342 Cr.P.C., wherein she negated the allegations as under: -

> *"I am married woman having two daughters. My husband is a poor labourer. I used to pluck Falsa from the plants of Muhammad Idrees along with number of ladies on the daily wages basis. On the alleged day of occurrence, I along with number of ladies were working in the fields. Both the ladies Mst. Mafia Bibi and Mst. Asma Bibi PWs quarreled with me over fetching water which was offered by me to bring for them but they refused saying that since I am Christian, so, they never took water from the hand of Christian. Over this, quarrel was insued and some hot words were exchanged between myself and the PWs ladies. The PWs then approached Qari Saalam complainant through his wife who remained teaching the both ladies, hence, the PWs were conspiring with Qari Saalam got a false, fabricated and fictitious case against me. I offered my oath to police on Bible that I had never passed such derogatory and shameful remarks against the Holy Prophet (PBUH) and the Holy Quran. I have great respect and honour to the Holy Prophet (PBUH) as well as Holy Quran and since police had conspired with the complainant, so, the police has falsely booked me in this case. The PWs are real sisters and interested to falsely involve me in this case as they both felt disgrace and dishonour on the basis of altercation and hard words extended to them. Qari Saalam complainant is also interested person and both the ladies remained teaching holy Quran from his wife. My forefathers are living in this village since creation of Pakistan. I am also about 40 years old and since the alleged occurrence, no complaint likewise this never exist*

> ***against me. I am Christian in the village, so, being ignorant of any Islamic thought, how can I use such clumsy and derogatory remarks against the beloved Prophet (PBUH) of Allah and the Divine book viz Holy Quran. PW Idrees is also a interested witness who has close family links with their above said ladies."***

7. The appellant did not appear as her own witness to make statement on oath under Section 340 (2) Cr.P.C. to rebut the allegations levelled against her nor did she opt to lead any defence evidence.

8. After conclusion of trial, the appellant was convicted and sentenced by the learned trial Court, as mentioned above.

9. Learned counsel for the appellant contends that both the eye witnesses, Mafia Bibi PW.2 and Asma Bibi PW.3, a student of wife of the complainant, are interested and inimical witnesses and the present case is result of an altercation between the appellant and the witnesses, however, PW.1 Qari Muhammad Saalam ignited the situation and has converted the same into this false case; that evidence of extra judicial confession is discrepant; that the learned trial court did not examine the veracity of both the witnesses through *Tazkiyah-al-Shuhood* that was necessary in the case of blasphemy keeping in view the observation of the Hon'ble Supreme Court in the case of Ayub Masih vs. The State (PLD 2002 SC 1048); that the prosecution witnesses are inconsistent; that there is an inordinate delay of about five days in lodging of the FIR that casts doubt about the probity of the witnesses; that a false story was concocted by the

witnesses; that the appellant, in her statement recorded u/s 342 Cr.P.C, expressed her full respect to the Holy Prophet (Peace Be Upon Him) and Holy Quran and she offered oath on Bible to the investigating officer to prove her innocence; that the I.O neither visited the place of occurrence nor did he interrogate the people of vicinity and that the appellant being innocent deserves acquittal.

10. Conversely, learned Deputy Prosecutor General assisted by learned counsel for the complainant opposed the contentions, raised by learned counsel for the appellant and argued that the appellant has committed a heinous offence and has hurt the feelings of Muslims; that the delay in lodging of the FIR is well explained because the allegation, being very serious, was verified and thereafter matter was reported to the police; that both the eye witnesses who heard the derogatory remarks from the appellant, have not been cross examined on the crucial aspect of the case i.e blasphemy and that the learned trial court has rightly convicted the appellant.

11. We have heard the learned counsel for the appellant, the learned Deputy Prosecutor General as well as the learned counsel for the complainant and perused the record with their able assistance.

12. The perusal of the FIR and statements of the eye witnesses of the occurrence reveal the defiling words which constitute the offence u/s 295-C, PPC and the prosecution has produced two type of evidence to prove the offence against the appellant i.e. direct evidence (ocular account) and the evidence of extra judicial

confession. To prove the incident, the prosecution produced Mafia Bibi PW.2 and Asma Bibi PW.3 who narrated the occurrence, which took place in the *'Falsa'* fields of Muhammad Idrees (CW.1). Mafia Bibi PW.2 in examination in chief inter alia maintained as under: -

> ***"...The accused Asia Bibi present in the court stated before me and others that Hazrat Muhammad PBUH fell ill on the bed one month prior to his death and Naooz Billah (نعوذ باللہ), the insects were developed/created in his mouth and ear. The accused further stated that Hazrat Muhammad PBUH contracted marriage with Hazrat Khadeja Razi Allah Anha just in order to loot her wealth and after looting the same, the Holy Prophet discarded Hazrat Khadeja Razi Allah Anha. She further told that the Holy Quran is not a divine book but it has been written/compiled by you, Muslims..."***

The minute perusal of cross examination upon this eye witness reveals an astonishing fact that she has not been cross examined by the defence qua the supra reproduced pivotal part of her incriminating statement against the appellant. We are surprised that not even a single suggestion was put to witness to rebut this part of statement, constituting the offence of blasphemy alleged against the appellant.

Similarly, Asma Bibi PW.3, in her examination in chief, inter alia deposed as under: -

> ***"...During the plucking of Falsa, the accused Asia Bibi narrated before me and others that Hazrat Muhammad PHUB fell ill on the bed one month prior to his death and the insects were hatched from his mouth and ear. She further declared that Hazrat Muhammad PBUH contracted marriage with Hazrat Khadeja Razi Allah Anha in order to loot her wealth and after looting the same she has discarded by the Holy Prophet PHUB. She further mentioned that the Holy Quran is not a divine and Holy Book but it is man made book..."***

A perusal of cross examination by the defence upon this witness, reflects the same casual attitude as her statement has not been challenged by putting necessary questions meant to dig out the truth, albeit only suggestions in this regard have been put to her who has negated the same. It transpires that the defence has not defended its case with the required seriousness as the most relevant aspect of the prosecution case remained unrebutted i.e regarding appellant's presence on 14.6.2009 in the *'Falsa'* fields of Muhammad Idrees CW.1 along with other Muslim lady workers including Mafia Bibi PW.2, Asma Bibi PW.3, her uttering blasphemous remarks about the Holy Prophet (PBUH) and derogatory words spoken by her about the Holy Quran in presence of the eye witnesses. The Hon'ble Supreme Court, while discussing Article 132 of Qanun-e-Shahadat Order, 1984, has repeatedly held that when a specific and material fact is deposed in examination in chief and if it is not subjected to the cross examination, same is to be deemed to have been admitted. Suffice it to refer the case of *Hafiz Tassaduq Hussain v. Lal Khatoon and*

others (PLD 2011 Supreme Court 296) wherein the Hon'ble Supreme Court of Pakistan has held as under: -

> ***"This all brings the case within the realm of the principle that if a material fact has been deposed in the examination in chief and it is not subjected to the cross examination, it shall be deemed to have been admitted".***

Similar view has been taken in plethora of judgments by the Hon'ble superior Courts of this country.

This leads us to observe that the statement of PW.2, Mafia Bibi to the extent of actual occurrence of utterance of blasphemous words by the appellant remained unrebutted hence, admitted and even PW.3 Asma Bibi has been half heartedly cross examined to this extent as mentioned above.

The presence of the eye witnesses and the appellant at the relevant time in the *'Falsa'* field is not denied as is evident from the following suggestions, put to both the PWs. PW.2 Mafia Bibi was suggested as under: -

> ***"It is incorrect to suggest that I recorded my statement against the accused Asia Bibi due to the quarrel which took place between me and Asia Bibi during the plucking of Falsa on the same day.***

Similar suggestion was also put to PW.3 Asma Bibi, which is as under: -

> ***"It is incorrect to suggest that on the day of occurrence, a quarrel took place between me and the***

accused Mst. Asia Bibi in the said garden on the issue of drinking water".

We have also noticed that the defence could not point out or even suggest any previous enmity, ill will or ulterior motive of the eye witnesses against the appellant to falsely implicate her in the case of such a heinous nature. Moreover, the testimony of CW.1 Muhammad Idrees, an independent person, who was also present in the field at the relevant time, provides strong corroboration to the evidence furnished by the eye witnesses. Keeping in view the consistent and straightforward statements of both the eye witnesses regarding the actual occurrence, we do not find any reason to disbelieve their testimony.

13. So far as the contention, raised by the learned counsel for the appellant regarding the delay in reporting the matter to the police, is concerned; we are of the opinion that the same, in the peculiar circumstances of this case, is immaterial especially when the direct evidence, produced by the prosecution, is consistent, coherent and confidence inspiring because such delay only becomes significant where the prosecution evidence and other circumstances of the case tend to tilt the balance in favour of the accused. Even otherwise, no unchaste advantage seems to have been derived by the prosecution from such delay in reporting the matter to the police rather it reflects that extra care and caution was taken by the complainant prior to reporting the matter to the police due to the seriousness and gravity

of the same. Even otherwise, as discussed above, no ill will against any of the witnesses has even been alleged by the defence.

14. As regards the argument qua the non-appearance of other ladies, present in the field at the time of occurrence, during investigation or before the learned trial court, another Hon'ble Bench of this Court has already dilated upon such aspect while deciding the similar case titled *Haji Bashir Ahmad v. The State* (2005 YLR 985) wherein while referring different incidents from the life time of the Holy Prophet Muhammad (PBUH) has observed at page 991 of the judgment as under: -

> ***"To constitute offence under S.295-C, PPC, number of witnesses were not required and it was not necessary that such abusive language against Holy Prophet (P.B.U.H) should be made loudly in public or in a meeting or at some specific place, but statement of single witness that some body had made utterance with the contempt of Holy Prophet (P.B.U.H) even inside the house was sufficient to award death penalty to such contemnor".***

Hence, this argument is of no help to the defence.

15. Evidence of extra judicial confession, furnished by all the private witnesses i.e PW.1 Qari Muhammad Saalam and PW.4 Muhammad Afzal as well as CW.1 Muhammad Idrees, to the extent of confessing her guilt in a public gathering, cannot be termed as extra judicial confession as no time, date and manner of commission of offence and further no circumstances under which the appellant

had allegedly committed the offence, have been narrated in the alleged confessional statement.

16. After going through the case law cited by learned counsel for the appellant, we have noticed that the same is not applicable to the facts and circumstances of this case as in *Muhammad Mahboob alias Booba v. The State* (PLD 2002 Lahore 587), the accused was alleged to have pasted the *Ishtihar* at the main gate of the mosque and the prosecution evidence was insufficient. In (PLD 2002 Supreme Court 1048) the PWs were found inimical towards the accused whereas in this case no previous enmity between the parties has even been alleged during the trial rather it is the case of the appellant that she along with her other family members was living peaceful life along with the complainant and the witnesses of the case since decades.

17. Having considered all pros and cons, we have come to the conclusion that there is sufficient evidence available on record to establish that the appellant has defiled the sacred name of the Holy Prophet Muhammad (PBUH), that constitutes an offence u/s 295-C, PPC as the prosecution has proved the charge against her through direct unimpeachable evidence extended by PW.2 and PW.3, further corroborated by the statement of CW.1 and result of investigation, conducted by PW.6 Muhammad Amin Bukhari, Superintendent of Police, therefore, her conviction recorded by the learned trial court is maintained.

18. So far as the quantum of sentence to the appellant is concerned; after having given our anxious consideration to this aspect of the case and the relevant law, we are of the view that even if there is any mitigating circumstance in favour of the appellant, this Court cannot alter the death sentence provided under the law that has been settled through the judgment, passed by the Hon'ble Federal Shariat Court on 30th October, 1990 in case titled *Muhammad Ismail Qureshi v. Pakistan through Secretary Law and Parliamentary Affairs* (PLD 1991 FSC 10) and the recent case titled *Ilyas Masih Monem, Advocate and another v. Federation of Pakistan and another* (PLD 2014 Federal Shariat court 18), wherein the latest legal position regarding sentence under section 295-C, PPC has been emphasized as under: -

> ***"There is no cavil to the legal proposition that according to clause 3(b) of Article 203-D of the Constitution of Islamic Republic of Pakistan, any law or provision shall, to the extent to which it is held to be repugnant to the Injunctions of Islam, cease to have effect on the day on which the decision of the Court takes effect. This Court vide judgment dated 30-10-1990 had declared the punishment of imprisonment of life for an offence falling under section 295-C, P.P.C as repugnant to the Injunctions of Islam as ordained in the Holy Quran and Sunnah of the Holy Prophet (S.A.W) and ordered the same to be deleted up to 30th April, 1991. The appeal filed against the aforementioned judgment of the Federal Shariat Court of Pakistan has also been dismissed by the Shariat Appellate Bench of the Supreme Court of Pakistan on 19-5-1991. The aforesaid legal position has been categorically admitted in the report dated 4-10-2013 submitted by Federation through Secretary, Ministry of Law, Justice and Human Rights, wherein it is mentioned that the judgment of the Federal Shariat Court is deemed to have been implemented to the extent of omitting punishment of life imprisonment under section 295-C, P.P.C with effect from the date on which the decision of the Federal Shariat***

> ***court has taken effect i.e. 30-4-1991. Hence, the said judgment of the Federal Shariat Court of Pakistan has attained finality. Therefore, the punishment i.e. imprisonment for life, for commission of an offence under section 295-C has ceased to have effect with effect from 30-4-1991. Consequently, the Secretary, Ministry of Law, Justice and Human Rights, Government of Pakistan, Islamabad is directed to take necessary steps for the implementation of the judgment of this Court dated 30-10-1991 in letter and spirit. He would ensure that the punishment i.e. imprisonment for life provided under section 295-C, P.P.C is deleted from P.P.C as well as relevant law books and the Registrar of all the High Courts be directed to circulate the same amongst all the Judicial Officers of Pakistan. A report in this respect shall be submitted by the Secretary, Ministry of Law, Justice and Human Rights, Government of Pakistan, Islamabad within a period of two months."***

19. Keeping in view all above, after applying the recognized principle of appreciation of evidence and our finding of conviction and sentence under Section 295-C PPC against the appellant, we feel it appropriate to comment upon the argument of the learned counsel for the appellant that in such cases mode of inquiry to be adopted by a court to satisfy itself to the credibility of a witness should be the test of *Tazkiyah-al-Shuhood* as provided for the trial of offence under Hudood Laws (1979). There is no dispute that in cases of enforcement of *Hadd,* Court can validly insist for the standard of credibility of witness while applying this test well recognized under the Islamic Law but we are of the considered view that in the absence of any corresponding amendment in procedural law for testing credibility of a witness at such a higher standard, the principle of *Tazkiyah al Shuhood* cannot be applied in other cases. This legal proposition did come for consideration in the case of *Ayub Masih vs.*

The State (PLD 2002 SC 1048) but the Hon'ble Supreme Court left the proposition open while observing as under:-

> ***"The appellant is entitled to acquittal on merits of the case, therefore, there is no need to advert to the contention whether the offence under section 295-C, PPC is liable to Hadd which was raised by the learned counsel for the appellant as an alternate plea with the rider that it be treated as not pressed and the question be left open if the appellant is found entitled to the benefit of doubt on merits of the case. The question is accordingly left open."***

Therefore, feeling utmost necessity for necessary corresponding amendments in procedural law for the proof of an offence where only sentence provided is death, a copy of this judgment is being sent to the Government of Pakistan through Secretary, Ministry of Law, Justice and Human Rights, Islamabad for taking necessary steps in this regard. Registrar of this Court shall send a copy of this judgment to the concerned quarter without any delay.

20. For what has been discussed above, this Criminal Appeal No.2509 of 2010 stands dismissed. Resultantly, the ***M.R. No.614 of 2010*** is answered in the ***AFFIRMATIVE and the death sentence awarded to the appellant Mst. Asia Bibi is confirmed.***

(Muhammad Anwaarul Haq) ***(Syed Shahbaz Ali Rizvi)***
Judge ***Judge***

Approved for reporting.

Judge ***Judge***

Rafaqat Ali